CIVIL REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

1886 *January 7.*

DHUMEE BEHARA (PLAINTIFF) *v.* C. H. C. SEVENOAKS (DEFENDANT.)*

Master and servant—Monthly service—Wrongful leaving of employment, Consequence of—Right to Wages.

When a monthly servant leaves his employment wrongfully in the course of the then current month, he loses all rights to wages for the time he had actually served during that month.

DHUMEE BEHARA, who had been a punka-puller in the service of C. H. C. Sevenoaks, brought a suit against the latter for balance of wages due for the month of July and 12 days of August. The defendant pleaded payment of Rs. 2 for the month of July and non-liability for the 12 days of August, on the ground that the man had left his service without giving any previous intimation. The Munsiff, sitting as a Court of Small Causes, found that the plaintiff had been engaged on Rs. 3 a month; that he had abruptly left his employment without any reasonable cause, and received only Rs. 2 for the month of July; but, in pursuance of the rule followed by the Calcutta Court of Small Causes in such cases, namely that "when a monthly servant leaves his employment wrongfully in the course of the then current month, he loses all right to wages for the time he had actually served during that month," gave a decree for one rupee and dismissed the claim for the 12 days of August, subject to the decision of the High Court, to which he referred the following question under s. 617 of the Civil Procedure Code:—

"Whether a servant who was employed by the month, but who leaves his employment abruptly and without any previous intimation in the middle of the month, and that not on account of any fault, omission or ill-treatment on the part of the employer, is entitled to his wages proportionate to the number of days he has actually served."

The decision of the High Court (GARTH, C.J. and BEVERLEY, J.) was as follows:—

We think that the rule laid down by the Judges of the Calcutta

* Civil Reference No. 24 of 1886, made by Baboo Behari Lal Mullick, Munsiff of Midnapur, dated the 16th of September 1885.

1886

DHUMEE BEHARA v. SEVENOAKS.

Court of Small Causes is correct, and that the same rule is applicable to the Mofussil. An old Regulation (Regulation VII of 1819) provided that in such cases fifteen days' notice should be given by either party wishing to terminate the contract, and that in default of notice fifteen days' pay should be forfeited. But that Regulation has been repealed, and in the absence of any legislative enactment on the subject, we think that the Calcutta rule is generally and correctly followed.

K. M. C.

PRIVY COUNCIL.

SARABJIT SINGH (PLAINTIFF) *v.* F. C. CHAPMAN (DEFENDANT).

P. C. *
1886
February 10.

[On appeal from the Court of the Judicial Commissioner, Oudh.]

Lunatic—Act XXXV of 1858, *s.* 9—*Court of Wards in Oudh—Power to lease lands of proprietor disqualified from lunacy.*

The order of a Civil Court declaring, under Act XXXV of 1858, an Oudh talukdar to be of unsound mind and incapable of managing his affairs, renders him a disqualified proprietor within the meaning of s. 9 of that Act, with the result that the Court of Wards is authorized to take charge of his estate without a further order of the Civil Court appointing the Court of Wards to be manager.

A Civil Court having made an order declaring a talukdar to be of unsound mind and incapable of managing his affairs, and having at the same time appointed to be manager of his estate the Deputy Commissioner of the District, who also acted as manager of the Court of Wards :

Held, that a lease for more than five years made by the latter officer, as representing the Court of Wards, was not invalidated under s. 14 of the above Act, providing that no manager, appointed by the Civil Court under it, shall have power to grant a lease for any period exceeding five years.

APPEAL from a decree (19th September 1883) of the Judicial Commissioner of Oudh, affirming a decree (19th September 1882) of the District Judge of Rae Bareli.

The principal question now raised related to the provision in s. 14 of Act XXXV of 1858 (an Act to make better provision for the care of the estates of lunatics), that no manager appointed by the Civil Court under that Act to take charge of the estate of a person adjudged to be of unsound mind and

* *Present:* LORD BLACKBURN, LORD MONKSWELL, LORD HOBHOUSE, AND SIR R. COUCH.